



Appeal Decision

Site visit made on 11 November 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/G3110/W/19/3226064
244 Barns Road, Oxford OX4 3RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Cantay Estates Ltd and GreenSquare Group Ltd against the decision of Oxford City Council.
 - The application Ref 18/01758/FUL, dated 28 June 2018, was refused by notice dated 14 November 2018.
 - The development proposed is a change of use from office use (retention of some B1 floorspace at ground floor level) to provide 27no 1-bed flats, including creation of a fourth storey at roof level; associated external alterations and the provision of bin and bicycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have made minor changes to the description of development contained in the banner heading above to remove superfluous words and to improve clarity.

Main Issues

3. The main issues are the effect of the proposal on:
 - The living conditions of future occupiers, with particular regard to internal and outdoor amenity space
 - The character and appearance of the area, with particular regard to the loss / re-provision of trees.
 - Employment land provision within the area
 - Affordable housing provision within the area

Reasons

4. The appeal building is a largely vacant 3-storey, purpose-built office building, which is occupied at ground floor level. The proposed development would convert most of the building to a residential use, with an additional floor added to the roof. Two separate office units would be created at the front of the building at ground floor and served by separate entrances; the residential units would be served by the existing main entrance and would be physically separate from the office units.

5. The appeal building is located on the eastern side of Barns Road in Cowley Primary District Centre, opposite a shopping centre on the western side of the street. A mixed use residential building is located to the south of the appeal site with further office buildings to the north and northeast.

The living conditions of future occupiers, with particular regard to internal and outdoor amenity space

6. Policy HP12 (indoor space) contained in the Council's Sites and Housing Plan 2011 – 2026 adopted in 2013 (SHP) sets out standards that new housing should meet, including in terms of internal floorspace.
7. However, a Written Ministerial Statement (WMS) was made in March 2015, which amongst other things addresses such space standards. The WMS states that *Existing Local Plan...policies relating to...internal space should be interpreted by reference to the nearest equivalent new national technical standard*.
8. The Government's *Technical Housing Standards: nationally described space standard* 2015 (THS) sets out minimum internal floorspace standards for new housing¹. For 1-bedroom flats such as are proposed, the minimum internal floorspace would be 39m² for single occupancy units². However, where such a flat has a shower room instead of a bathroom, footnote 3 on page 5 of the THS states that the floor area of the flat may be reduced from 39m² to 37m².
9. Consequently, whilst the submitted drawings show that Flats 9 and 17 would have an internal floor area of 38.1m², both would also contain shower rooms rather than bathrooms and consequently meet the THS internal floorspace standards.
10. Appendix 7 of the appellant's statement provides details of each of the proposed dwellings, and whilst not all properties would fully comply with the THS requirements, the vast majority would. Whilst the floorspace figures are not determinative by themselves, I have had regard to them alongside the layouts of the proposed flats. In this case, I am content that all the proposed flats would provide a satisfactory standard of internal space, such that future occupiers would not feel uncomfortable or cramped.
11. Policy HP13 (outdoor space) of the SHP specifies standards for private open space for new housing. With reference to these standards, the proposed balconies serving upper floor flats would be somewhat below the size standards specified in the supporting text to Policy HP13. However, I note that the appellant has offered to revise their proposal so as to meet the requirements. This is a matter that could be suitably controlled by a condition and I note that such a condition (No 15) is listed as one of those suggested by the Council should the appeal be allowed.
12. The submitted drawings show that ground floor flats 2 and 3 would have direct access to the proposed rear amenity area, which would be screened from nearby footpaths by a timber fence and wall. Ground floor flats 1 and 4, whilst enjoying an outlook over this space, would not have direct access to it. Occupiers would need to exit the building by the main front entrance and walk to the rear of the building in order to do so, which is contrary to Policy HP13.

¹ Table 1 - Minimum gross internal floor areas and storage (m²)

² 50sqm for two-person occupancy.

13. However, when I visited the area, I saw the nearby public open space, a short distance to the northwest of the appeal site on the northern side of Between Towns Road. This open space contains seating, footpaths, a children's play area, mature trees and hedges and distinct areas of grassland such as would be found in a public park. Future occupiers of the proposed development would need to cross one or two busy roads to reach this open space, depending upon their route. However, there are controlled and uncontrolled pedestrian crossing points and pedestrian refuges within the carriageway.
14. Both main parties have made reference to different appeal decisions³ to support their case. I am not fully familiar with these cases, and in any event, each appeal should be determined on its individual merits. In this case, and with reference to the wording of Policy HP13, I am satisfied that the proposed outdoor amenity space, together with appropriately sized balconies and the nearby public open space, would mean that future occupiers of the proposed development would have satisfactory access to suitable outdoor amenity space.
15. For these reasons the proposed development would not adversely affect the living conditions of future occupiers, with particular regard to internal and outdoor amenity space. It would, therefore, accord with Policies HP12⁴ and HP13 of the SHP.

The character and appearance of the area, with particular regard to the loss / re-provision of trees.

16. At the rear of the existing building are seven mature trees, five of which would be removed as part of the proposed development. The appellant has proposed to plant three new trees as part of the proposed scheme.
17. The appellant's Arboricultural Report⁵ has classified the trees within the appeal site. Trees T1 and T2 are Category B Scots Pine and are to be retained. The trees to be removed are Category C trees: tree T3 is a Birch tree, whilst trees T4-T7 are Norway Maple trees. All the trees are considered to be middle aged and in fair condition, although the Category C trees are considered to be of low quality and should not represent a significant constraint to the redevelopment of the site.
18. The existing mature trees provide screening to the rear of the building, including from Knolles Road, a predominantly residential street to the southeast of the appeal building. There are other mature trees near to the appeal site at the end of Knolles Road which are unaffected by the proposed development. Together, all of the trees contribute towards the character and appearance of the area.
19. I note the comments from the Council's Tree Officer, seeking either the retention of all the trees or confirmation of the 'details of the proposed replacement trees; which should be advanced nursery stock semi-mature sized trees of appropriate species planted in appropriately designed tree planting pits'

³ APP/G3110/W/17/3177856 – allowed
APP/G3110/W/18/3213877 – dismissed

⁴ Other than with regard to internal space standards.

⁵ Sylva Consultancy, June 2018

20. The replacement trees would be fewer than the number removed and would take some time to grow to a size to be able to provide a similar level of screening. However, from the evidence I am satisfied that this approach would not have a significant adverse impact on the character and appearance of the area. The appellant has stated that they are content with the replacement approach proposed by the Council's Tree Officer and I am satisfied that this can be controlled by a suitable condition.
21. For these reasons the proposed development would not adversely affect the character and appearance of the area, with particular regard to the loss / re-provision of trees. It would, therefore, accord with Policies CP1 (development proposals) and NE15 (loss of trees) of the Oxford Local Plan 2001-2016, adopted in November 2005 (OLP).

Employment land provision within the area

22. The appeal building is one of four buildings within a contiguous Key Protected Employment Site (KPES), shown on the Proposals Map and linked to Policy CS28 (employment sites) of the Oxford Core Strategy, adopted in March 2011 (OCS).
23. In addition to the appeal building, and to the north of it, is the similar-sized *Raglan House*, with the larger *Knights Court* building next door to the east on Between Towns Road. The fourth building, the *Telephone Exchange* to the southeast of *Knights Court*, faces onto St Luke's Road.
24. The KPES is one of two within the Cowley Primary District Centre boundary. The proposed development would reduce the amount of employment floorspace in this KPES from an estimated total of 6,859sqm to around 5,922sqm, and would leave just 165sqm in 244 Barns Road⁶. However, this self-evidently would not result in the loss of the KPES and does not, therefore, conflict with Policy CS28 in this regard.
25. Nevertheless, the proposed development would be predominantly residential in nature and would therefore detract from the employment function of the KPES. Policy CS28 is part of the development plan for Oxford and seeks to protect employment sites from inappropriate development.
26. However, the OCS was adopted prior to the first publication of the National Planning Policy Framework in 2012 (the Framework), which has been updated on a number of occasions subsequently. Policy CS28 is generally consistent with the current Framework in terms of planning policies to build *a strong, competitive economy*⁷. However, it is less consistent with the approach set out in Chapter 11 - *Making effective use of land*⁸ and I therefore give it less than full weight.
27. Paragraph 120 of the Framework concerns allocated land in the development plan for an area, which has not so far been developed. Where the local planning authority considers there is no reasonable prospect of the land being developed for its allocated use, then it should re-allocate the land to a more deliverable use, as part of its local plan review. In the interim, applications for

⁶ Floorspace references are taken from paragraph 5.5 and Footnote 1 of the appellant's Statement of Case.

⁷ Chapter 6 of the Framework, including paragraph 81.

⁸ Paragraph 120

alternative uses that would contribute towards meeting an unmet need should be supported.

28. Paragraph 120 does not directly relate to the circumstances of this appeal, where an office building exists within the KPES and could be occupied without the need for a planning application to be made. Nevertheless, I am mindful of the need for planning policies and decisions to reflect changes in the demand for land and I give paragraph 120 weight.
29. Policy E1 (employment sites) is contained within the Draft Oxford Local Plan 2036 (DOLP), which has been submitted for examination. The policy is not listed on the Council's decision notice refusing planning permission and I also note from the Council's statement that 91 representations have been made to the policy.
30. Draft Policy E1 would support the principle of redevelopment of Category 2 sites such as the appeal site for uses such as housing, subject to certain provisos, one of which the appeal development would not meet⁹. I note the appellant's comments regarding this proviso. However, assessing the draft Policy is a matter for the examination of the DOLP and not the appeal before me. Consequently, the appeal development would conflict with draft Policy E1, but given the stage in the examination process and the representations made, I give draft Policy E1 only limited weight.
31. The appellant has provided evidence that the appeal building has been marketed for employment use for several years, and whilst attracting some interest, this has not resulted in the sale or lease of the property for employment purposes.
32. The appellant has also provided assessments of the appeal building, its location and the office market in Oxford¹⁰, which conclude that the appeal building has limited long term prospects as office accommodation. This is due, amongst other things, to the size, age and very limited car parking provision of the building, together with its secondary location (in terms of office space) within Cowley Primary District Centre, with limited accessibility to people outside Oxford.
33. It is not disputed by the main parties that Oxford has a significant housing need and I note the approach contained in the emerging DOLP for meeting this need¹¹, including the future provision to be met by other districts in Oxfordshire and by Oxford itself¹². The soundness or otherwise of this approach is a matter for the examination of the DOLP and not the appeal before me.
34. The proposed development would contribute towards meeting Oxford's housing requirements, although no substantive evidence has been provided that the type of housing proposed is particularly sought after here. However, there is clear evidence of commercial interest in the appeal building for office use, both the existing residual use and the two proposed ground floor units. There was also interest evidenced by the unsuccessful negotiations with a company as a result of the aforementioned marketing exercise. Given this interest, I am not

⁹ (e) – the number of employees in B class uses on the site when the site was at full capacity is retained;

¹⁰ Appendix 6 of the appellant's Statement of Case.

¹¹ Paragraphs 3.10–3.12 of the DOLP

¹² Draft Policy H1 (the scale of new housing provision) sets for provision for 8620 new homes between 2016 – 2036.

satisfied that there is not a reasonable prospect that the building could be used for employment purposes in the future, notwithstanding the limitations identified by the appellant's assessments of it.

35. The proposed development would reduce the capacity of this KPES and the quantity of the city's office floorspace supply. Notwithstanding the recent delivery of employment floorspace in Oxford or future forecast employment land supply, I am not satisfied that this would not have a detrimental impact on employment land provision within the city.
36. The appellant has drawn my attention to two developments on different KPESs within Oxford, at 474 Cowley Road¹³ and the *former Travis Perkins site*¹⁴. I am not familiar with either of these sites or the approved developments. However, I note that the Care Home development at 474 Cowley Road would not be an employment use¹⁵ and that the specific guidance for future redevelopment of the former Travis Perkins site refers to maintaining the existing level of employment¹⁶.
37. From the evidence, I am content that there are significant differences between these examples and the appeal before me, including in terms of the type and scale of the replacement development and the ensuing jobs created, and a specific development plan policy to direct redevelopment, which does not exist for the appeal KPES. In any event, each proposal should be determined on its individual merits, which is what I have done in this case.
38. For these reasons the proposed development would adversely affect employment land provision and would therefore conflict with Policy CS28 of the OCS, with draft Policy E1 of the emerging DOLP and with the Framework, in this regard.

Affordable housing provision within the area

39. The proposed development would entail the creation of 27no dwellings within 244 Barns Lane. It is not disputed that the proposal would conflict with Policy HP3 (affordable homes from large housing sites) contained in the SHP, which requires a minimum of 50% of new homes to be 'affordable', with 80% of these to be 'social rented'. The appellant has not provided a viability assessment of the appeal development, which they consider would not be appropriate in this case.
40. The proposal is the partial conversion of an existing building and the occupiers of all residential units would be required to share the same common space, including the entrance and the single core containing the lift shaft and stairwell; adhere to the same rules; and, agree to the same occupancy terms and building specification. The appellant states that this 'would be unacceptable to a Registered Provider ("RP")'. I note the appellant's comments regarding their development experience and functions. However, no substantive evidence has been presented to demonstrate that RPs would be likely to find such arrangements unacceptable.

¹³ LPA Refs. 15/00930/OUT and 17/01463/FUL.

¹⁴ LPA Ref. 14/01273/OUT.

¹⁵ As defined by Policy CS28 of the OCS.

¹⁶ Policy SP56 (the Travis Perkins site).

41. Creating segregated residential access / cores would be likely to increase costs and reduce capacity. No details of the likely costs or layout for such an approach are provided although I note that the Planning Statement that accompanies the application states that such segregation would reduce the capacity to between 16-20 1-bedroom two person units. This could accommodate up to 32 people, a similar number to the appeal development.
42. Instead of providing on-site affordable housing the appellant proposes to provide a financial contribution equivalent to 15% of the total sale value of the units, around £800,000. Such an approach would be consistent with the third tier of the cascade approach contained in Policy HP3, for developments where it has been demonstrated that on-site affordable housing provision would not be viable.
43. However, in the case of the appeal development the appellant has not demonstrated that the provision of 50% affordable dwellings, either with shared or with segregated entrance / cores / space, would render the scheme unviable. Consequently, the proposal conflicts with Policy HP3 and the cascade approach it contains is not engaged.
44. The appellant's statement also appends an extract from the officer report for another scheme in Oxford at the Westgate Centre¹⁷, where this approach was used instead of on-site affordable housing provision. From the limited information before me regarding this alternative proposal I am not satisfied that it is sufficiently comparable to the appeal scheme, and in any event, each proposal should be determined on its individual merits, which is what I have done in this case.
45. The appellant has provided a certified copy of a signed Unilateral Undertaking (UU) to provide a financial contribution equivalent to 15% of the total sale value of the units, which constitutes a payment for affordable housing in lieu of on-site provision.
46. This contribution would be directly related to the development. However, as set out above, the UU would circumvent the cascade approach contained in Policy HP3 of the SHP. This allows for such a financial contribution only after the development has been demonstrated to be unviable and after alternative options to amend the scheme have been considered¹⁸, which has not occurred in this case.
47. I am not, therefore, satisfied that the UU is fairly and reasonably related in scale to the development or would be sufficient to make the development acceptable in planning terms. Consequently, it does not meet all of the 3 tests contained under paragraph 122 of the Community Infrastructure Levy Regulations 2010 (as amended) or at paragraph 56 of the Framework.
48. For the reasons given above, the proposed development would adversely affect affordable housing provision and would conflict with Policy HP3 of the SHP.

¹⁷ LPA Ref. 13/02557/OUT

¹⁸ Firstly, reduce the percentage of affordable housing provided (to a minimum of 40% of all homes) by reducing the intermediate housing element only; secondly, at 40% affordable housing, reintroduce an element of intermediate housing incrementally up to a maximum 8% of all homes

Conclusion

49. The proposed development would have an acceptable impact upon the living conditions of future occupiers with particular regard to internal and outdoor amenity space and on the character and appearance of the area, with particular regard to the loss / re-provision of trees. However, these are outweighed by the adverse impacts on employment land provision and affordable housing provision within the area.
50. For these reasons, and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR